

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Joshua David Frank,

Case No. 23-CV-3767 (JMB/LIB)

Plaintiff,

v.

**ORDER**

State of Minnesota; Moorhead Police  
Department; K-9 Kash; Officer  
Z. Johnson, #320; Officer B. Musich,  
#309; Officer C. Johnson, #337; Officer  
J. Brannan, #203; Officer J. Johnson,  
#348; Officer R. Reller, #311; and Officer  
J. Secord, #337,

Defendants.

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This matter is before the Court on Plaintiff Joshua David Frank's Objection (Doc. No. 25) to the Report and Recommendation (R&R) of United States Magistrate Judge Leo I. Brisbois, dated March 4, 2024. (Doc. No. 17.) The R&R recommends dismissing Frank's § 1983 claims against the following Defendants under 28 U.S.C. § 1915A(b)(1) for failure to state a claim on which relief may be granted: (1) State of Minnesota; (2) Moorhead Police Department; (3) K-9 Kash; (4) Z. Johnson and B. Musich in their official capacities; and (5) C. Johnson, J. Brannan, J. Johnson, R. Reller, and J. Secord in their individual and official capacities. (*See id.*) The R&R also recommends dismissing Count One of the Amended Complaint because Frank's claim alleging a *Miranda* violation is not actionable under § 1983. (*Id.* at 5.) The R&R permits Frank's claims against Officers Z. Johnson and B. Musich in their individual capacities to proceed at this stage. (Doc. No.

17 at 3; Doc. No. 18.) For the reasons set forth below, the Court overrules Frank's objection and adopts the R&R.

The Court reviews the challenged portions of an R&R under a de novo standard of review, 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3); D. Minn. L.R. 72.2(b)(3), and it reviews unchallenged findings for clear error, *see Grindler v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (per curiam). Because Frank is self-represented, his objection is entitled to liberal construction. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

Here, Frank filed a document styled as a "Motion to Reinstate #2 of[] Report and Recommendation," which the Court construes as an objection to the R&R.<sup>1</sup> (Doc. No. 25.) Frank's objection challenges only the portion of the R&R concerning his claims against Officers Z. Johnson and B. Musich in their official capacities. (*See id.*; Doc. No. 17 at 4–6.) Frank offers various legal theories to support his objection but does not identify any error of law or fact that warrants rejection of the Magistrate Judge's recommendation.

Like the Magistrate Judge, the Court is unable to identify sufficient facts supporting Frank's claims against Officers Z. Johnson and B. Musich in their official capacities. (*See generally* Doc. No. 12.) Further, the Court has reviewed the unobjected-to aspects of the R&R and discerns no error, clear or otherwise, in the Magistrate Judge's reasoning.

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<sup>1</sup> After the R&R was issued, the Court also received the following three additional filings from Frank: (1) Request for a Non-Com Legal Aid (Doc. No. 21); (2) Motion of Supportive Facts (Doc. No. 22); (3) Motion to Add a Defendant and Add a Relief (Doc. No. 26); and (4) Motion to Readd the State of Minnesota as Defendant (Doc. No. 34). None of these filings can be construed as objections to the R&R and, therefore, the Court does not address them in this Order.

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's objection to the R&R (Doc. No. 25) is OVERRULED.
2. The R&R (Doc. No. 17) is ADOPTED.
  - a. Plaintiff's claims against Defendants State of Minnesota, Moorhead Police Department, and K-9 Kash are DISMISSED WITHOUT PREJUDICE;
  - b. Plaintiff's official-capacity claims against Defendants Z. Johnson and B. Musich are DISMISSED WITHOUT PREJUDICE;
  - c. Plaintiff's official-capacity and individual-capacity claims against Defendants C. Johnson, J. Brannan, J. Johnson, R. Reller, and J. Secord are DISMISSED WITHOUT PREJUDICE; and
  - d. Count One of the Amended Complaint (Doc. No. 12) is DISMISSED WITHOUT PREJUDICE.

Dated: May 1, 2024

/s/ Jeffrey M. Bryan  
Judge Jeffrey M. Bryan  
United States District Court